

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 13 of 2022

1. Ms. Binita Rai,
Aged about 31 years,
D/o Late Netra Kumar Rai,
R/o Nalam Kolbung,
P.O. Namthang and P.S. Namchi,
South Sikkim-737132.
2. Smt. Meena Gurung,
Aged about 59 years,
W/o Late Netra Kumar Rai,
R/o Nalam Kolbung,
P.O. Namthang and P.S. Namchi,
South Sikkim-737132.

..... **Petitioners**

Versus

1. Mrs. Sheela Rai,
D/o Aita Singh Rai,
Aged about 44 years,
R/o Nalam Kolbung,
P.O. Namthang and P.S. Namchi,
South Sikkim-737132.
2. Mrs. Shanti Rai,
D/o Aita Singh Rai,
Aged about 58 years,
R/o Nalam Kolbung,
P.O. Namthang and P.S. Namchi,
South Sikkim-737132.
3. Mrs. Budhi Maya Rai,
W/o Arun Kumar Rai,
Aged about 64 years,
R/o Nalam Kolbung,
P.O. Namthang and P.S. Namchi,
South Sikkim-737132.
4. Mrs. Man Maya Rai,
W/o Deo Kumar Rai,
Aged about 57 years,
R/o Central Pandam,
P.O. Upper Pandam and P.S. Rangpo,
East Sikkim-737132.

5. Mr. Birkha Singh Rai @ S.K. Rai,
S/o Late Aita Singh Rai,
Aged about 51 years,
R/o Nalam Kolbung,
P.O. Namthang and P.S. Namchi,
South Sikkim-737132.
6. Mr. Harka Man Rai,
S/o Late Man Bir Rai,
Aged about 62 years,
R/o Hidden Forest,
Gangtok, East Sikkim-737101.

..... **Respondents.**

Application under Article 227 of the Constitution of India.

(for issuance of Writ in the nature of Certiorari and/or any other appropriate writ, order or direction of the like nature. Legality and validity of the impugned order dated 18.12.2021 passed by the learned Civil Judge, South Sikkim, at Namchi in Title Suit No. 06 of 2019 (Sheela Rai & Ors. Vs. Binita Rai & Ors.)

Appearance:

Mr. S.S. Hamal, Senior Advocate (Legal Aid Counsel) with Mr. Pradeep Sharma, Advocate for the Petitioners.

Ms. Sachina P.Y. Subba and Mr. Sishir Moothay, Advocates for the Respondent Nos. 1 to 4.

Mr. Tashi Rapten Barfungpa, Legal Aid Counsel for the Respondent No. 5.

Mr. Karma Thinlay Namgyal, Senior Advocate (Legal Aid Counsel, Pro Bono) assisted by Mr. Thupden Yongda, Legal Aid Counsel for the Respondent No.6.

21.11.2022

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. This is an application under Article 227 of the Constitution of India preferred by the petitioners who were defendant nos. 1 and 2 in a suit filed by the respondent nos. 1 to 4 as plaintiffs seeking to challenge an Order dated 18.12.2021 passed by the learned Civil Judge, Namchi, South

Sikkim (the learned Trial Court) on an application under Order VI Rule 17 read with section 151 of the Code of Civil Procedure, 1908 filed by the respondent nos. 1 to 4 i.e. the plaintiffs seeking to amend the plaint. The learned counsel for the parties have taken this Court through the application for amendment as well as the impugned Order dated 18.12.2021.

2. Order VI Rule 17 provides that:

“17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

3. A bare perusal of the provision indicates that to allow an amendment when the trial has commenced there is a twin requirement that firstly the amendment sought for ought to be necessary in determining the real questions in controversy and secondly in spite of due diligence the party applying could not have raised the matter before the commencement of the trial.

4. During the course of the arguments the learned counsel for the respondent nos. 1 to 4 sought to rely upon certain evidence that had come up during trial which according to her compelled her to move the application for amendment. It is the case of the learned Senior Counsel appearing for the petitioners that although, it was pointed out by them that the suggested

amendment would change the nature and character of the plaint there is no finding of the learned Trial Court on this aspect. The learned counsel for the respondent nos. 1 to 4 submit that although it was not specifically pleaded, during the course of arguments before the learned Trial Court the evidence which came up during the trial compelling her to move the application for amendment were pointed out to the learned Trial Court and they were examined as well. It is the case of the petitioners that these facts however, are not reflected in the impugned Order.

5. At this juncture the learned counsel for the parties unanimously suggests that it would perhaps be better if the matter is remanded to examine this issue once again. It is noticed that many of the arguments made before this Court by the learned counsel for the respondent nos. 1 to 4 are not so lucidly reflected in the application filed. In view of the submissions made and on examining the application as well as the impugned Order this Court is of the view that justice would be better served if the impugned Order is set aside and the learned Trial Court is requested to re-examine the application for amendment once again. Should the respondent nos. 1 to 4 desire to file additional affidavit or additional documents in support of and to explain better the circumstances compelling the respondent nos. 1 to 4 to prefer the application for amendment they may be permitted to do so. Needless to say if such additional affidavit or additional documents is filed, the

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contesting parties shall be at liberty to file their response to it. It is accordingly so ordered. Without examining the merits of the matter, the impugned Order dated 18.12.2021 is set aside and the matter remanded to the learned Trial Court to re-examine the application under Order VI Rule 17 read with section 151 of the Code of Civil Procedure, 1908 filed by the respondent nos. 1 to 4 as directed above. The application is disposed of accordingly with no order as to costs.

(Bhaskar Raj Pradhan)
Judge

Internet : **Yes**
to/